

JUL 13 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Ruch et al.

Title: APPARATUS AND METHOD FOR MAINTAINING BONES IN A  
HEALING POSITION

Application No.: 10/712,574

Filed:

November 13, 2003

Examiner: Araj, Michael J.


Group Art Unit:

3733

Atty. Docket No.: 24179785.010031 US

July 13, 2006

Mail Stop Amendment  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

<p>VIA FACSIMILE TRANSMISSION (571) 273-8300</p> <p>DATE OF DEPOSIT: July 13, 2006</p> <p>I, Scarlett Pereida, hereby certify that this correspondence is being deposited via facsimile transmission to (571) 273-8300 on the date shown above with the United States Patent and Trademark Office.</p> <p> Scarlett Pereida</p>
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Dear Sir:

This communication is in response to the Examiner's Office Action of May 16, 2006 with a period of response through June 16, 2006. Applicants herewith submit a request for a one-month extension of time and the associated fee. The Examiner has indicated that the application contains claims directed to patentably distinct apparatus and method claims, wherein: Claims 1-30 are drawn to an apparatus, classified in class 606, subclass 54; and Claims 31-36 are drawn to a method, classified in class 606, subclass 104.

In response to this requirement for restriction, Applicants respectfully assert that the inventions of claims 1-30 are not necessarily distinct from claims 31-36 as required by 35 U.S.C. § 121. However, for the convenience of the Examiner, Applicants provisionally elect, without traverse, the invention of claims 1-30. Applicants fully intend to avail themselves to the protections of 35 U.S.C. § 121 for any subsequently filed divisional or continuation applications that claim subject matter substantially similar to claims 31-36.

DALDMS/576542.1

## ATTORNEY DOCKET NO. 24179785.010031US

The Examiner has further indicated that the application includes several distinct species, namely groups I – Figures 1, 2; II – Figures 3, 4A, 4B and 4C; III – Figure 5A; and IV – Figure 5B. Applicants disagree with the Examiner's position that these are distinct species. In particular, Applicants traverse the distinction between groups III and IV stating that these groups are distinct in view of the alternative placement of the connecting groove in Figure 5B. Applicants provisionally elect, with traverse, the species of group III should no generic claim be allowable. Applicants note the Examiner's statement that independent claims 1, 13 and 19 are generic. Applicants respectfully submit that independent claims 29 and 30 are also generic and that claims 1-30 are readable on group III.

Applicants note the requirement to specifically address the supposed errors in the restriction requirement. As to groups III and IV, the Examiner has indicated that the alternative placement of the grooves causes such groups to be patentably distinct from one another. Using the terminology of the application, the rotatable fastener or hinge 112 (connecting groove as cited by the Examiner) in Fig. 5A has the substantially same configuration as the rotatable fastener or hinge 112 (connecting groove as cited by the Examiner) in Fig. 5B. Rather, the only difference between these two Figures is the forward placement of the hinge 112 (in Fig. 5B) versus the rearward placement of the hinge 112 (in Fig. 5A). Accordingly, the hinges 112 of Figs. 5A and 5B facilitate a pivoting function, albeit providing alternative points of pivot for the clamp assembly 86.

If the Examiner has any questions regarding this response or the Application in general, Examiner is invited to contact the Applicants' attorney at the below-listed telephone number. Although Applicant does not believe any fees are due with the filing of this response, the Commissioner is hereby authorized to withdraw any deficiencies or credit any overpayment to

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**For Application No. 10/712,574**

- 1. Petition for Extension of Time (one month)**
- 2. Response to Rest Office Action mailed May 16, 2006**

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